

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

PAUL CALHOUN and BARBARA
CALHOUN,

Plaintiffs,

v.

No. _____

MID-CONTINENT CASUALTY COMPANY,

Defendant.

**NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. §§ 1332 and 1441
BY DEFENDANT MID-CONTINENT CASUALTY COMPANY**

COMES NOW Defendant Mid-Continent Casualty Company and provides notice that it removes the state court action described below to the United States District Court for the District of New Mexico, pursuant to 28 U.S.C. §§ 1332 and 1441. In support of removal, Defendant states as follows.

1. Plaintiffs Paul and Barbara Calhoun commenced this action in the Eighth Judicial District Court, County of Taos, State of New Mexico by filing their "Complaint for Breach of Contract, Bad Faith, Unfair Claims Practices, and Unfair Trade Practices in Cause No. D-820-CV-2016-00038 (hereafter "Complaint") on February 1, 2016. (*See* Plaintiffs' Complaint, attached hereto as Exhibit A).

2. Service of the Summons and Complaint was made on the New Mexico Superintendent of Insurance, pursuant to NMSA 1978, § 59A-5-32, and stamped as received on February 16, 2016. (*See* Summons, attached hereto as Exhibit B; Attorney Affidavit at ¶¶ 3-4, attached hereto as Exhibit C).

3. Pursuant to NMSA 1978, § 59A-5-32, the New Mexico statute regarding service of legal process on insurers, service is only complete upon receipt of process by the authorized insurer. *Sawyer v. USAA Ins. Co.*, 839 F.Supp.2d 1189 (2012).

4. The Complaint was received by Defendant Mid-Continent Casualty Company on February 22, 2016. (See Attorney Affidavit at ¶ 5, attached hereto as Exhibit C).

5. Defendant Mid-Continent Casualty Company's 30-day deadline to remove the Complaint has not expired. See 28 U.S.C. § 1446(b) ("[t]he notice of removal of a civil action or proceedings shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based....").

6. This Notice of Removal is filed in this Court within thirty (30) days of the service of the Complaint in this case on Defendant Mid-Continent Casualty Company. See 28 U.S.C. § 1446(b).

7. The Eighth Judicial District Court, where this matter was originally filed, is within this Court's district. As set forth in greater detail below, this Court has jurisdiction over the subject matter of this lawsuit. Therefore, this action is properly removed to this Court, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446.

DIVERSITY JURISDICTION

6. Plaintiffs Paul Calhoun and Barbara Calhoun are residents and citizens of New Mexico. (See Plaintiffs' Complaint at ¶ 1, attached hereto as Exhibit A; Attorney Affidavit at ¶ 8, attached hereto as Exhibit C).

7. Defendant Mid-Continent Casualty Company is a foreign corporation doing business in the State of New Mexico. (*See* Plaintiffs' Complaint at ¶ 2, attached hereto as Exhibit A).

8. Defendant Mid-Continent Casualty Company is incorporated in Ohio with its principal place of business in Tulsa, Oklahoma. (*See* Attorney Affidavit at ¶ 7, attached hereto as Exhibit C).

9. Therefore, complete diversity of citizenship exists for the purposes of this Court's original jurisdiction over the subject matter of this lawsuit.

AMOUNT IN CONTROVERSY

10. Plaintiffs allege that Defendant Mid-Continent Casualty Company's unjustifiably refused to provide defense or indemnity to La Mesa Homes, LLC and/or Bison Enterprises, LLC. (*See* Plaintiffs' Complaint at ¶ 12, attached hereto as Exhibit A).

11. Plaintiffs, as assignees' of La Mesa Homes, LLC and/or Bison Enterprises, LLC, Complaint for Breach of Contract, Bad Faith, Unfair Claims Practices, and Unfair Trade Practices against Mid-Continent Casualty Company. (*See* Plaintiffs' Complaint, attached hereto as Exhibit A).

12. Plaintiffs seek recovery of \$817,727.03, the amount of the Judgment entered against La Mesa Homes, LLC and/or Bison Enterprises, LLC in Cause No. D-820-CV-201400243, plus costs and interest. (*See* Plaintiffs' Complaint at ¶ 18, attached hereto as Exhibit A; Attorney Affidavit at ¶ 6, attached hereto as Exhibit C).

13. Plaintiffs further allege that Defendant Mid-Continent Casualty Company's actions were reckless, wanton, intentional, willful and/or grossly negligent, and seek punitive damages from Mid-Continent Casualty Company. (See Plaintiffs' Complaint at ¶ 53, attached hereto as Exhibit A; Attorney Affidavit at ¶ 6, attached hereto as Exhibit C).

14. Based on the alleged damages sought by the Plaintiffs in the Complaint, the amount in controversy exceeds \$75,000. Attorney Affidavit at ¶ 8, attached hereto as Exhibit C).

15. The above-described action is a civil action of which this Court has original jurisdiction under the provisions of 28 U.S.C. §§ 1332, 1441, in that it is a civil action between citizens of different states where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

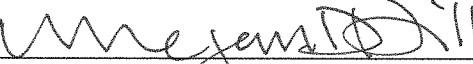
16. Defendants are concurrently filing a Notice to Adverse Parties of Removal to Federal Court, with the clerk of the Eighth Judicial District Court, County of Taos, State of New Mexico, pursuant to 28 U.S.C. § 1441(b).

17. Pursuant to D.N.M. LR-CIV 81.1(a), Defendants will submit copies of the records and proceedings from the state court action within thirty days of its filing of this Notice of Removal.

18. Venue is appropriate in the United States District Court for the District of New Mexico because the alleged actions and/or omissions occurred in New Mexico.

Respectfully submitted,

CIVEROLO, GRALOW & HILL, P.A.

By 

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CERTIFICATE OF SERVICE

THIS WILL CERTIFY that a true copy of the foregoing *Notice of Removal* was filed electronically through the U.S. District Court for the District of New Mexico's CM/ECF filing system on March 17, 2016, which caused the following attorneys to be electronically served as follows:

Attorney for Plaintiffs

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